U.S. Senate
Republican Policy
Committee

Larry E. Craig, Chairman
Jade West, Staff Director
No. 92

Legislative Notice

Editor, Judy Gorman Prinkey

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S. 1981, Truth in Employment Act (The "Anti-Salting" Bill)

Calendar No. 344

S. 1981 was introduced on April 23, 1998 by Senator Tim Hutchinson. The following day the bill was read a second time and placed on the Calendar; the bill was not referred to committee.

NOTE WORTHY

- On Thursday, a cloture petition was filed on the motion to proceed to S. 1981. The vote on the cloture motion will occur Monday, September 14, at 5:30 p.m. There will be debate on the subject from 11:00 a.m. to 1:00 p.m. and at 5:00 p.m.

- S. 1981 amends the National Labor Relations Act to provide [1] that an *employer* is not required to hire an individual who is *not* a bona fide applicant (a bona fide applicant is someone who seeks employment with the "primary purpose" of furthering the interests of that employer and not of some second employer or agent), and [2] that an *employee* who *is* a bona fide applicant continues to have all the rights that are provided by law.

- In a Senate hearing, Senator Hutchinson said the bill will restore the "balance of rights" between employees and employers by making it clear that an employer "is not required to employ a person seeking employment for the primary purpose of furthering the objectives of an organization other than that employer."

- The House of Representatives passed a related bill (H.R. 3246) on March 26, 1998 by a vote of 202-to-200. The House bill had four titles, but S. 1981 picks up only one of those titles: S. 1981 is identical to Title I of H.R. 3246 as it passed the House.

- S. 1981 is cosponsored by Senators Lott, Nickles, Coverdell, Mack, Frist, Enzi, Bond, Sessions, Roberts, Allard, Hagel, Helms, Warner, Ashcroft, Brownback, Grassley, Faircloth, Inhofe, Collins, Cochran, Grams, and Thurmond.

- Attached is a list of some of the organizations that support S. 1981.

HIGHLIGHTS

S. 1981, the Truth in Employment Act, makes one substantive change in federal law. Section 4 of the bill amends Subsection 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) by adding the following at the end of the subsection:

> "Nothing in this subsection shall be construed as requiring an employer to employ any person who is not a bona fide employee applicant, in that such person seeks or has sought employment with the employer with the primary purpose of furthering another employment or agency status: *Provided*, That this sentence shall not affect the rights and responsibilities under this Act of any employee who is or was a bona fide employee applicant, including the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

This substantive provision merely removes from the protection of Subsection 8(a) any person who seeks a job without having at least one-half of his motivation directed toward actually working for the employer.

S. 1981 also contains "Findings" (in Section 2) and Congressional "Purposes" (in Section 3). These sections should be consulted for some of the important reasons for passing S. 1981. For example, Section 2 says in part:

> "(3) Increasingly, union organizers are seeking employment with nonunion employers not because of a desire to work for such employers but primarily to organize the employees of such employers or to inflict economic harm specifically designed to put nonunion competitors out or business, or to do both.
>
> "(4) While no employer may discriminate against employees based upon the views of employees concerning collective bargaining, an employer should have the right to expect job applicants to be primarily interested in utilizing the skills of the applicants to further the goals of the business of the employer."

BACKGROUND

The National Labor Relations Act (NLRA) forbids an employer to "interfere with, restrain, or coerce" any employee who desires to "form, join, or assist" a labor union or to "bargain collectively." 29 U.S.C. §§158(a)(1), 157 (1994 ed.). The National Labor Relations Board has held that an applicant for employment is an "employee" within the meaning of the NLRA (and therefore protected by the Act) even when he is being paid by a union to join the company for the purpose of helping organize the company for the union. The Supreme Court has

held that the Board's interpretation is lawful. *NLRB v. Town & Country Electric*, 516 U.S. 85 (1995) (unanimous court). The company-defendant had argued that such an applicant could not be a bona fide "employee" covered by the NLRA because of his divided loyalties. The Court upheld the Board's determination that, indeed, a man can serve two masters.

An applicant or employee who works for an employer while being simultaneously on the payroll of a union (and whose purpose is to organize the employer's workforce for the union) is a "salt." What he does is known as "salting." The House Committee on Education and the Workforce said in its report:

> "'Salting' abuse is the placing of trained professional organizers and agents in a non-union facility to harass or disrupt company operations, apply economic pressure, increase operating and legal costs, and ultimately put the company out of business. The object of the union agents is accomplished through filing, among other charges, unfair labor practice charges with the National Labor Relations Board. As the five hearings the Committee held . . . showed, 'salting' is not merely an organizing tool, but has become an instrument of economic destruction aimed at non-union companies that often has nothing to do with organizing." [H. Rept. No. 105-453 at 5]

The House Committee quoted from an organizing manual of the International Brotherhood of Electrical Workers: The goal of a union salt, it said, is to "threaten or actually apply the economic pressure necessary to cause the employer to raise his prices, scale back his business activities, leave the union's jurisdiction, go out of business and so on." [H. Rept. at 6]

The House Committee said,

> "[F]orcing employers to hire union business agents or employees who are primarily intent on disrupting or even destroying employers' businesses does not serve the interests of bona fide employees under the NLRA and hurts the competitiveness of small businesses. [The bill] does not prohibit organizers from getting jobs. [The bill] simply removes an incentive to use the NLRA as a weapon against an employer by persons who have little interest in employment. All the legislation does is give the employer some comfort that it is hiring someone who really wants to work for the employer. As long as the 'salt' is applying to do a good job for the employer, [the bill] does nothing but protect the employee applicant, and the employer who has a right to have a workforce that is going to work for the good of the company. [The bill] returns a sense of balance to the NLRA which is being undermined by the Board's current policies." [H. Rept. at 9-10]

OTHER VIEWS

There is no Senate Report so there are no published "views" of Senators. On Friday, September 11, Senator Kennedy made a floor statement in opposition to S. 1981. That statement presumably includes the kinds of criticisms that would have been included in a committee report.

The House Report (No. 105-453) contains some 15 pages of Minority Views which were signed by all Democratic members of the House Committee on Education and the Workforce. The Democrats wrote (at page 37 of the report) that the anti-salting provisions of the House bill "den[y] employment to those union supporters who seek jobs at non-union worksites, solely because they may exercise their right to engage in collective action." [See also, pages 42-45]

ADMINISTRATION POSITION

At press time, RPC had not received a Statement of Administration Policy (SAP) on S. 1981. However, there is little doubt that the Administration strongly opposes the bill. When the House was considering H.R. 3246, the Administration issued a SAP that said that the President "would veto" the bill. That SAP (dated March 25, 1998) also said:

> "Although the bill purports to promote 'fairness' for small business and employees, H.R. 3246 would in fact seriously erode workers' rights and protections. In particular, the Administration strongly opposed provisions in H.R. 3246 that would allow businesses to fire or refuse to hire union organizers. Such discrimination is wrong. The rights of workers to organize in order to secure higher pay, greater benefits, and job protections must be preserved."

As noted above, the anti-salting provision to which the March SAP speaks was amended on the House floor. We suppose, however, that the Administration still opposes the provision.

COST

The Congressional Budget Office provided a cost estimate for H.R. 3246 which projected no significant budgetary impact to the anti-salting provisions. Similarly, there were no intergovernmental or private-sector mandates in the House bill. [See House report at 28-31]

POSSIBLE AMENDMENTS

At press time, there were no printed amendments to S. 1981.

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